



New York University
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September, 2013

**ARTHUR GARFIELD HAYS CIVIL LIBERTIES PROGRAM
ANNUAL REPORT 2012-2013**

As detailed below, this was another busy and productive year for the Hays Program.

This year will be remembered for the Court's recognition of same-sex marriage, and for the continued vitality, even if in a weakened state, of affirmative action. Hays Fellows played an important role in these victories. Vinay Harpalani (Hays Fellow 2008-2009) brought decades of study of diversity in education to aid the team preparing the Society of American Law Teachers' amicus brief in *Fisher v. Texas*. Many Fellows made important contributions to the victories in marriage equality, including Jenny Pizer (Hays Fellow 1986-1987). In other news, Tara Urs (Hays Fellow 2004-2005) joined the faculty at Seattle Law School. Chip Gray and Alan Houseman, both 1967-1968, retired. Chip headed the South Brooklyn Legal Services from 1970 to 2012 and Alan stepped down as head of the Center for Law and Social Policy. David Milton (Hays Fellow 2000-2001) made partner at Howard Freidman, CPC, a civil rights law firm in New York City. Some Former Fellows have written to tell us of important civil liberties victories in their practices. For example, Amy Kimpel (Hays Fellow 2008-2009) reports that the Ninth Circuit reversed a conviction in a case in which she was trial counsel. Judge Kowzinski attacked government counsel and the trial judge, while favorably quoting Amy from the record. Here's the link: <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/06/21/12-50220.pdf>. We also are very happy to announce that Holly Maguigan, former Acting Hays Director, earned the annual Great Law Teacher Award from SALT, founded by Norman, and she will be celebrated at a dinner in New York on January 4, 2014.

On Saturday, October 26, the Hays Program will celebrate our 55th Anniversary and the creation of a new, endowed Hays Fellowship, the Sylvia A. Law Fellowship in Economic Justice. (Steve Polan (Hays Fellow 1975-1976) conceived and organized the new fellowship and many former fellow contributed generously.) The reunion at the Law School will include a panel discussion

beginning at 4 p.m., followed by a reception and dinner, with a keynote address by Susan Herman, President of the ACLU.

As in past years, each semester a former Hays Fellow met with current Fellows before and during dinner to discuss experiences with the Program, career choices, and other issues. Jonathan Strong (Hays Fellow 1973-1974) joined us in the fall. Jonathan is a long time advocate for tenants' rights, both at HUD and in private practice. Karen J. Freedman (Hays Fellow 1979-1980) spoke with us in the spring. Karen is the founder and Executive Director of Lawyers for Children, Inc, which has provided free legal counsel to children, particularly vulnerable young people in foster care.

In May, we hosted the sixth annual reception for graduating Fellows and their friends. It was a delight to meet the partners, siblings, and friends who have provided support to the Fellows and therefore to the Program.

For further news on the Program, we urge a visit to the Hays website: <http://www.law.nyu.edu/academics/fellowships/haysprogram/index.htm>. The site also provides a link to Lora Hays's video about the Program and to all of the Madison Lectures as published in the New York University Law Review.

1. THE FELLOWS

The 2012-2013 fellows were:

Brian Chelcun	Tom Stoddard Fellow
Jared Davidson	Deborah Rachel Linfield Fellow
Anthony Enriquez	Roger Baldwin Fellow
Elizabeth Jordan	Palmer Weber Fellow
Richard Sawyer	Robert Marshall Fellow
Heather Vail	Leonard Boudin Fellow
Emily Winograd	Harriet Pilpel Fellow

The work of the Hays Fellows—always the heart of the Program — reflects the ever-evolving challenges to civil liberties. This year problems involving the rights of immigrants and LGBT people, reproductive rights, and economic justice commanded greatest attention. In addition, Fellows worked on issues of race discrimination, children's rights, national security and human rights. Here is a summary of the work done by the Hays Fellows this past year.

The Rights of Immigrants

In the fall, Heather Vail worked at the Immigrant Defense Project, under the supervision of Isaac Wheeler. Much of her work focused on research to help lawyers representing legal permanent residents threatened with automatic deportation because of a conviction of an "aggravated felony," sometimes possession of a small quantity of a controlled substance. The circuits were divided on whether minor drug offenses triggered automatic deportation. In April 2013 the

Supreme Court resolved the circuit conflict in *Moncrieffe v. Holder*, 133 S. Ct. 1678, holding that “sharing of a small amount of marijuana socially” does not require automatic deportation. Heather participated in preparations for the Supreme Court argument received a ticket to attend.

Liz Jordan interned with the Legal Aid Society’s Immigration Law Unit (ILU). ILU attorneys provide a broad range of services to noncitizens in New York City, from helping people file Deferred Action Petitions to stave off deportation, to advising their criminal defense attorneys about the immigration consequences of criminal convictions. Liz worked primarily with two attorneys who assisted detained immigrants with their immigration cases. Fluent Spanish speakers, Liz and the attorneys conducted a Legal Orientation Program every Wednesday in English and Spanish for every detained immigrant coming to court for their first appearance before an immigration judge. Since many detained immigrants cannot afford a lawyer and do not have one as of right, this orientation is often their only chance to consult with a lawyer throughout the immigration process. She also conducted research and follow-up interviews with several people who had possible relief, traveling to see them in detention facilities in New Jersey, and researched case law and crafted legal arguments for several appeals from immigration decisions.

Rick Sawyer worked at ACLU’s Immigrants’ Rights Project (IRP), with Deputy Director Judy Rabinovitz (Hays Fellow 1984–1985). IRP has a number of ongoing cases, which allowed Rick to experience the full depth and breadth of its extraordinary practice. Among his many tasks, Rick helped attorneys prepare for oral argument in *Valle del Sol v. Whiting*, a challenge to Arizona’s controversial anti-immigrant law, and *Morales v. Chadbourne*, a case challenging the illegal detention by Immigration and Customs Enforcement officials of a U.S. citizen. Rick also drafted legal memoranda that IRP will use as it develops its long-term litigation strategy against the executive detention of non-citizens.

The Rights of LGBT people

In the spring, Brian Chelcun interned with the Legal Aid Society’s LGBT Law and Policy Initiative, a new project to address issues facing the LGBT youth clientele *and* the attorneys at Legal Aid who represent them. Brian helped prepare for a major lawsuit challenging New York state Medicaid coverage for transition related health care. He also conducted research for Legal Aid attorneys on a number of different issues affecting low income transgender youth and LGBT homeless youth in New York City.

Jared Davidson worked at the Peter Cicchino Youth Project (PCYP) at the Urban Justice Center during the spring. PCYP is a legal services project focusing on the civil legal needs of the thousands of homeless and street-involved lesbian, gay, bisexual, transgender, queer, and questioning young people in New York City. At PCYP, Jared’s work focused primarily on both asylum and name changes for LGBT homeless youth clients. He conducted critical research for a number of asylum seekers from both Jamaica and Honduras, and assisted in the drafting of asylum petitions and affidavits. In addition, he helped clients obtain name changes by drafting and filing petitions.

Heather Vail worked at the New York Civil Liberties Union investigating the constitutionality of conditions of probation or supervised release that limit the degree to which an individual can cross-dress or express certain forms of gender identity. She also worked on a Freedom of Information Law (FOIL) request and did substantive research on a pending appeal of a rejected FOIL petition, as well as a number of discrete projects in a wide range of civil liberties issues.

Reproductive Freedom

Emily Winograd, Harriet Pilpel/Planned Parenthood Fellow, worked with Planned Parenthood Federation of America's Litigation and Law Department. She researched legal issues surrounding Planned Parenthood's challenges to state laws restricting women's access to abortion and health services, and worked with the attorneys to develop litigation strategies. Emily worked on *Planned Parenthood Arizona, Inc. v. Betlach*, a challenge to an Arizona law that prohibits public family planning funds from going to abortion providers or entities associated with abortion providers. While Emily was there, the district court struck down the law on the grounds that it violates the Medicaid Act.

Jared Davidson worked at the Center for Reproductive Rights (the Center) during the fall. Litigating cases in both U.S. and international courts, the Center leverages both U.S. constitutional law as well as international human rights law, and represents the only global legal advocacy organization dedicated to advancing reproductive rights. At the Center, Jared's work focused on researching how the Center might leverage the First Amendment's Establishment Clause to challenge laws aimed at restricting reproductive autonomy. This research culminated in the drafting of a seventy page legal memorandum for the Center's legal staff, which analyzes the extent to which the Establishment Clause could be used in future litigation.

Economic Justice

Anthony Enriquez, Roger Baldwin Fellow, interned at South Brooklyn Legal Service's Foreclosure Prevention Unit in the fall. SBLS provides direct services to low-income Brooklynites, including legal advice and referral, representation in court and before administrative agencies, and help with community development and education projects. Anthony researched and prepared memos on a wide variety of consumer protection law issues in support of SBLS's ongoing litigation in state and federal courts against predatory mortgage lenders. He also investigated legal theories by which to extend liability to larger national banks for their funding of smaller local mortgage lenders who preyed on the elderly and communities of color.

In the fall semester, Emily Winograd worked with the Sex Workers Project at the Urban Justice Center. The Sex Workers Project provides client-centered legal and social services to individuals who engage in sex work, regardless of whether they do so by choice, circumstance, or coercion. Emily worked directly with clients, who are victims of sex trafficking, to help them vacate their prostitution-related criminal convictions. She interviewed clients, wrote affidavits, and filed motions in criminal court for her clients.

Race Discrimination

Liz Jordan interned during the fall semester at the American Civil Liberties Union's Racial Justice Program (RJP). RJP aims to preserve and extend constitutionally guaranteed rights to people who have historically been denied their rights on the basis of race through a broad array of litigation, public education, legislative initiatives, and community organization. At RJP, Liz worked primarily on a campaign to end the imprisonment of indigent criminal defendants for non-payment of their fines and fees, helping to implement litigation strategies in states identified in a 2010 ACLU Report, *In For a Penny* (<http://www.aclu.org/prisoners-rights-racial-justice/penny-rise-americas-new-debtors-prisons>). She also assisted on a lawsuit to combat racial profiling of Latino children in a Utah high school and researched the racial impact of credit card debt collection practices.

Children's Rights

In the fall, Rick Sawyer interned at Children's Rights, an organization started by Marcia Robinson Lowry (Hays Fellow 1968–1969) to protect the rights of children in state child welfare systems. Rick worked on *Cassie M. v. Chafee*, a putative class action challenging Rhode Island's foster care system, which is rife with abuse and neglect. *Cassie M.* has survived two motions to dismiss and is currently in discovery. Rick handled legal research relating to discovery motions and drafted a section of a motion to compel. He also dug into the voluminous discovery record to help build a case for the upcoming summary judgment battle.

National Security

Brian Chelcun interned with the American Civil Liberties Union's National Security Project. Brian conducted research for *Amnesty v. Clapper*, a case challenging the constitutionality of the 2008 amendments to the Foreign Intelligence Surveillance Act on Fourth and First Amendment grounds. Brian assisted project attorneys preparing for oral argument before the Supreme Court on the preliminary issue of whether the parties involved had standing to challenge the law. Brian also conducted research on the first amendment implications of *Holder v. Humanitarian Law Project* and material support statutes on the uncoordinated speech of U.S. citizens who express sympathy or support for Al Qaeda.

Human Rights

In the spring, Anthony Enriquez worked with Human Rights Watch in the Americas division, conducting fact-finding research into human rights abuses in Latin America. His work included interviewing political dissidents in Cuba, substantiating allegations of police violence against political protesters in the wake of the Venezuelan presidential election, and investigating the use of privatized security forces to attack environmental activists in Peru. He also researched case law from the Inter-American Court of Human Rights for use in an amicus brief to the Colombian Constitutional Court addressing the constitutionality of a congressionally proposed framework to end Colombia's 60-year internal armed conflict.

2. THE DIRECTORS.

Norman Dorsen. Norman was editor (with Cate de Julio) of *THE EMBATTLED CONSTITUTION* (NYU Press), which contains the most recent James Madison lectures, including a lecture by Justice Stephen Breyer and ten lectures by leading judges of the U.S. courts of appeals. Norman also wrote an article for a forthcoming book on Justice Harlan as seen by his law clerks. He has continued as senior advisor to the ACLU. He knows that he has gotten old because he has received several honors this year. The University of Buenos Aires granted him an honorary degree, the magazine of Columbia College published an extensive article on his civil liberties work, the ACLU established the Norman Dorsen Presidential Prize, only the second such award the organization has endowed (the other is named for Roger Baldwin), and NYU Law School has named Seminar Room 202 in Vanderbilt Hall the Professor Norman Dorsen Room, which now contains his extensive memorabilia.

Sylvia A. Law. Sylvia taught Constitutional Law at NYU in the fall semester. In the spring, she was on leave, visiting in Hawaii, where she taught a seminar on Reproductive Health Policy at the Richardson School of Law at the University of Hawaii.

With the adoption of the Affordable Care Act and the Supreme Court's decision, she has worked with advocates on the implementation of the Act. In the fall she gave the Dean Alfange Jr. Lecture at U. Mass Amherst on Health Care Reform and the Constitution, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2174263. (She spent a delightful day with Diane Curtis (Hays Fellow, 1993-1994) who is now the Director of Pre-Law Advising for Amherst.) In the spring she gave the key note address on the implementation of health reform at the Hawaii State legislature for a conference sponsored by the Hawaii Medical Association.

As chair of the Sheinberg Lecture Program, she helped to organize a law school program featuring Kathy Boudin, who spoke on "Hope, Illusion, and Imagination: The Politics of Parole and Reentry in the Era of Mass Incarceration." She serves on the boards of the Center for Reproductive Rights and the Center for Law and Social Policy. At the Law School, Sylvia is chair of the Faculty Committee on Career Services and of the Health and Benefits Area Group.

Helen Hershkoff. This year Helen received the 2013 Podell Distinguished Teaching Award at NYU. Her Inaugural Lecture of the Herbert M. and Svetlana Wachtell Professorship of Constitutional Law and Civil Liberties, "The Private Life of Public Rights: State Constitutions and the Common Law," was published in Volume 88, Number 1 of the New York University On-Line Law Review. She co-authored and oversaw the production of two civil procedure casebooks, together with Teacher's Manuals for each: Friedenthal, Miller, Sexton & Hershkoff, *CIVIL PROCEDURE: CASES AND MATERIALS ELEVENTH EDITION*; and Friedenthal, Miller, Sexton & Hershkoff, *CIVIL PROCEDURE: CASES AND MATERIALS COMPACT ELEVENTH EDITION FOR SHORTER COURSES*. A previously published essay was excerpted and included in a new casebook, *PROPERTY AND HUMAN RIGHTS*, edited by Florence Wagman Roisman. Since January 2012, three state courts have cited her work, see *Utah Transit Authority v. Local 382 of Amalgamated Transit Union*, 289 P.3d 582, 586 n.4 (Utah 2012); *King v. State*, 816 N.W.2d 1, 64 (Iowa 2012); *McCleary v. State*, 269 P.3d 227, 248 (Wash. 2012). Helen helped plan a conference on the Justiciability of Social and Economic Rights, held in February 2013 and hosted by the Southern Africa Legal Services Foundation Inc. at the Pocantico Center of the

Rockefeller Brothers Fund. She also continued to serve on the Board of Directors of the Urban Justice Center and the Brennan Center for Justice.

Adam Cox. During the 2012-13 academic year, Adam taught Immigration Law and the Rights of Noncitizens, as well Legislation and the Regulatory State. He presented papers at a variety of workshops and conferences, including Law and Society, the Conference on Empirical Legal Studies, and NOMOS. He completed work on two projects: Enforcement Redundancy and the Future of Immigration Law, 2012 Supreme Court Review; and Policing Immigration, University of Chicago Law Review (2013) (with Tom Miles). He also began work on a number of new projects related to immigration, voting rights, and constitutional law.

Adam also continued to serve on the board of the Brennan Center, where this past year he (along with Helen) served as a member of the strategic planning committee that shepherded the Center through the process of setting an ambitious agenda for the next five years.

3. JAMES MADISON LECTURE.

The James Madison lecture is considered the leading annual lecture at NYU Law School. It was founded, in 1959, "to enhance the appreciation of civil liberty and strengthen the sense of national purpose." The lecturers are limited to U.S. Supreme Court justices and judges of the U.S. Courts of Appeals. Fifteen Supreme Court justices and 29 court of appeals judges have delivered Madison lectures. Norman has directed the Madison lectures since 1977, and it is administered as part of the Hays Program. The fall 2012 lecture was delivered by Hon. Karen Nelson Moore of the Sixth Circuit who spoke on Aliens and the Constitution. The 2013 lecture will be given on October 15, 2013 by the Honorable William A. Fletcher of the Ninth Circuit Court of Appeals who will speak on the death penalty.

4. THE FELLOWS' NEXT STEPS.

Brian Chelcun (Tom Stoddard) will clerk for Magistrate Judge Jay Francis on the Southern District of New York in 2013-2014, and then for District Judge Allyne Ross on Eastern District of New York in 2014-2015. Jared Davidson (Deborah Rachel Linfield) will do litigation in the New York office of Jenner and Block; beginning in the fall 2014, he will clerk for James Denis on the Fifth Circuit Court of Appeals. Anthony Enriquez (Roger Baldwin) will be the Chadbourne and Parke Fellow at the Door, defending immigrant youth in removal proceedings. Elizabeth Jordan (Palmer Weber) will work as a Fellow at the Capital Appeals Project in New Orleans. Richard Sawyer (Robert Marshall), will be clerking for the Hon. Jenny Rivera of the New York Court of Appeals. Heather Vail (Leonard Boudin), is working in the Staff Attorney's Office of the Eighth Circuit Court of Appeals in St. Louis. Emily Winograd (Harriet Pilpel) will be a public defender in New York City.

5. NEW FELLOWS

In 2013-2014 the Fellows will be:

Shira Burton	Harriet Pilpel Fellow
Kadeem Cooper	Palmer Weber Fellow
Thomas Gottheil	Leonard Boudin Fellow
Leila Kang	Roger Baldwin Fellow
Jessica Rofe	Deborah Rachel Linfield Fellow
Allison Wilkinson	Robert Marshall Fellow

As in the past, the new Fellows were selected following interviews by the Directors and current Fellows on the basis of their demonstrated commitment to civil liberties, their public interest experience, and their academic qualifications.

We express our thanks to Gail Thomas for her dedicated work as administrative assistant and secretary to the Hays Program. We also thank Robert Anselmi for his administrative support and, in particular, his work in maintaining the Hays website.

Norman Dorsen
Sylvia A. Law
Helen Hershkoff
Adam B. Cox

PLEASE KEEP IN TOUCH WITH THE HAYS PROGRAM

We try to maintain up-to-date contact information for all Fellows. If your contact information has changed, please be sure to send us the new data either by email to gail.thomas@nyu.edu or mail your updated information to NYU Law School, Attn: The Hays Program VH 308, New York, NY 10012.

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Organizational affiliation

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